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DEPARTMENT OF ENVIRONMENTAL QUALITY

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Secretary of Natural Resources

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Robert G. Burnley
Director

Steven A. Dietrich
Regional Director

STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION A SPECIAL ORDER BY CONSENT ISSUED TO RUSSELL SHORT EXCAVATING, INC.

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code § 10.1-1307.D, 10.1-1309, and 10.1-1184, and § 10.1-1316.C, between the State Air Pollution Control Board and Russell Short Excavating, Inc., for the purpose of resolving certain violations of State Air Pollution Control Laws and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Air Pollution Control Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1301 and 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Order.
6. "Russell Short Excavating, Inc." means the corporation certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.

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7. "Facility" means the office and shop located on U.S. Route 24 in Bedford County, Virginia.
8. "WCRO" means the West Central Regional Office of DEQ, located in Roanoke, Virginia.
9. "O&M" means operations and maintenance.

SECTION C: Findings of Fact and Conclusions of Law

1. Russell Short Excavating, Inc. owns and operates an excavating business with a main office and shop located on U.S. Route 24 in Bedford County, Virginia
2. Russell Short Excavating, Inc. received a Notice of Violation on July 24, 2004 for open burning prohibited materials as defined in the Virginia Regulations for the Control and Abatement of Air Pollution. During an August 16, 2004 enforcement meeting with Mr. Russell Short, DEQ staff provided a copy of the open burning section of the Virginia Regulations for the Control and Abatement of Air Pollution
3. On the morning of July 26, 2005, DEQ staff was informed that open burning of materials had taken place at the Russell Short Excavating, Inc. facility lot on the afternoon of July 25, 2005.
4. On July 26, 2005, DEQ staff conducted a site inspection at the Russell Short Excavating, Inc. facility in Bedford County, Virginia. Based on observations made during this inspection, DEQ alleges that Russell Short Excavating, Inc. had burned prohibited materials defined in Virginia Regulations for the Control and Abatement of Air Pollution. The small pile burned was approximately a truck load or less. The pile consisted of small scraps of OSB, dry wall scraps, three aerosol cans, two plastic cans, a metal container that had contained drywall sealer, and 2x4 wood scraps. The remainder of the pile was limbs from a pear tree off the property and stumps from the property that were not yet burned. Mr. Russell Short was contacted by telephone by DEQ staff informing him of the DEQ observations. Mr. Short explained that an employee of his company had started the fire without his permission and he was aware that the materials should not have been burned.
5. On July 27, 2005, DEQ issued Russell Short Excavating, Inc., a Notice of Violation for alleged violations of the Virginia Air Pollution Control Board Laws and Regulations. The observations above are cited under the following regulations:
 - a. Section 9 VAC 5-40-5620.B of the State Air Pollution Control Board Regulations states that no owner or other person shall cause or permit open burning for the disposal of impregnated wood or other rubber or petroleum based materials.

- b. Section 9 VAC 5-40-5620.D of the State Air Pollution Control Board Regulations states no owner or other person shall cause or permit open burning for the purpose of a salvage operation or the disposal of commercial/industrial waste.
- c. Section 9 VAC 5-40-5620.F of the State Air Pollution Control Board Regulations, states that no owner or other person shall dispose of waste by open burning.

SECTION D: Agreement and Order

Accordingly the State Air Pollution Control Board, by virtue of the authority granted it pursuant to Va. Code §§10.1-1309 and 10.1-1316, orders Russell Short Excavating, Inc., and Russell Short Excavating, Inc. agrees to pay a civil charge of \$1,200.00 in settlement of the violations cited in this Order.

- 1. **\$1,200.00** of this civil charge shall be paid within 30 days of the effective date of this Order. Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia", delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

SECTION E: Administrative Provisions

- 1. The Board may modify, rewrite, or amend the Order with the consent of Russell Short Excavating, Inc., for good cause shown by Russell Short Excavating, Inc., or on its own motion after notice and opportunity to be heard.
- 2. This Order only addresses and resolves those violations specifically identified herein, including those matters alleged in the Notice of Violation issued to Russell Short Excavating, Inc. by DEQ on July 26, 2005. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.

3. For purposes of this Order and subsequent actions with respect to this Order, Russell Short Excavating, Inc. admits the jurisdictional allegations, but does not admit the factual allegations or legal conclusions of law contained herein. DEQ and Russell Short Excavating, Inc. agree that the actions undertaken by Russell Short Excavating, Inc. in accordance with this Consent Order do not constitute an admission of liability by Russell Short Excavating, Inc.. Russell Short Excavating, Inc. does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Order, the validity of the Findings of Facts and Conclusions of Law contained in Section C of this Order.
4. Russell Short Excavating, Inc. consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Russell Short Excavating, Inc. declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 9-6.14:1 *et seq.*, and the Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Russell Short Excavating, Inc. to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Russell Short Excavating, Inc. shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Russell Short Excavating, Inc. shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Russell Short Excavating, Inc. shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

- 9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
- 10. This Order shall become effective upon execution by both the Director or his designee and Russell Short Excavating, Inc..
- 11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Russell Short Excavating, Inc.. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Russell Short Excavating, Inc. from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
- 12. Any future prohibited open burning, as defined in the Virginia Regulations for the Control and Abatement of Air Pollution, either caused or permitted by Russell Short Excavating, Inc., will be considered a violation of this Order.
- 13. By its signatures below, Russell Short Excavating, Inc. agree to the issuance of this Order.

And it is so ORDERED this 9th day of SEPTEMBER 2005.

For Steven A. Dietrich
Robert G. Burnley, Director
Department of Environmental Quality

Russell Short Excavating, Inc. agrees to the issuance of this Order.

By: Russell Short

Date: 8/31/2005

Commonwealth of Virginia

City/County of Bedford

The foregoing document was signed and acknowledged before me this 31 day of
August, 2005, by Russell Short, who is
(name)

President
(title) of Russell Short Excavating, Inc., on behalf of the Corporation.

Elizabeth S. Thomas
Notary Public

My commission expires: 10/31/2007